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Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context

Seventh session

Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment

Third session

Minsk, 13–16 June 2017

Report of the Meeting of the Parties to the Convention on its seventh session and of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on its third session

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GE.17-16508(E)

1716508

Please recycle

Decision VII/1

Reporting and review of implementation of the Convention

The Meeting of the Parties to the Convention,

Recalling its decisions III/1, IV/1 and V/3 on the review of implementation, and decisions V/7–I/7 and VI/1 on reporting and the review of implementation,

Recalling also article 14 bis of the Convention on Environmental Impact Assessment in a Transboundary Context, as adopted by its decision III/7, which places a legal obligation on Parties to report on their implementation of the Convention,

Recognizing once again that regular reporting by each Party provides important information that facilitates the review of compliance under the Convention and thereby contributes to the work of the Implementation Committee,

Acknowledging that, for this reason, pending the entry into force of the second amendment to the Convention through decision III/7, Parties have shown their commitment to report regularly,

Having analysed the reports provided by Parties in response to the questionnaire on the implementation of the Convention,

Expressing serious concern that the former Yugoslav Republic of Macedonia, which was a Party to the Convention during the period under review, has not responded to the questionnaire,

Strongly emphasizing the importance of the timely submission of reports,

Expressing concern that Portugal and the United Kingdom of Great Britain and Northern Ireland reported on their implementation of the Convention during the period 2010–2012 with a delay of several years,

Also expressing concern that the following States Parties that were Parties to the Convention during the period under review responded to the questionnaire late (i.e., after the extended deadline of 30 April 2016): Croatia, Cyprus, Finland, Greece, Kyrgyzstan, Montenegro, Republic of Moldova, Serbia, Slovakia and the United Kingdom,

1. *Welcomes* the reports by Parties on their implementation of the Convention during the period 2013–2015, which have been made available on the Convention website;

2. *Adopts* the fifth review of implementation of the Convention (ECE/MP.EIA/2017/9) and requests the secretariat to arrange for its publication in an electronic format in all three official languages of the United Nations Economic Commission for Europe (ECE);

3. *Notes* the findings of the fifth review of implementation, including the following possible weaknesses or shortcomings in the Convention's implementation by Parties:

(a) There are differences in Parties' definitions of and approach to key terms in the Convention, such as "impact", "transboundary impact", "major change" and "final decision", which has the potential to cause problems, particularly if the consequence is a lack of clarity about which proposed activities fall within the scope of the Convention (articles 1 and 6);

(b) The national reports show that there is no standardized practice on the organization of transboundary consultations in accordance with article 5 — i.e., Parties'

approach to such consultations differs, with four Parties even treating them as optional. The procedure for and participants in such consultations differ from Party to Party;

(c) Only a minority of Parties have an express provision in their legislation on how to ensure application of article 6, paragraph 3, which requires concerned Parties to be updated on new information that may trigger consultations and a new decision before work on an activity commences;

(d) While the majority of Parties report they have an express provision regarding post-project analysis (article 7) in their national legislation, very few of the bilateral agreements and arrangements that were reported by Parties have provisions regarding post-project analysis and very few Parties reported that they had carried out such analyses in the period 2013–2015, even though this was identified as an issue in the fourth review of implementation (see ECE/MP.EIA/2014/3);

(e) There are several sets of guidance under the Convention, three of which were expressly mentioned in the questionnaire sent to Parties — namely, the sets of guidance on public participation, practical application and subregional cooperation.[1] The first two are not widely used, and the third is scarcely used at all;

(f) There is a continuing need for bilateral and multilateral agreements or other arrangements (article 8) and best practice to address differences between Parties' practice with respect to types of projects raising particular issues, such as joint cross-border projects or nuclear power plants;

(g) There is a lack of clarity about translation requirements. In the absence of an express provision in the Convention, a number of difficulties were reported concerning translation and interpretation, leading, in some cases, to serious problems particularly concerning delays and public participation;

(h) A number of Parties continue to report late;

4. *Requests* the secretariat to bring to the attention of the Implementation Committee general and specific compliance issues identified in the fifth review of implementation of the Convention, and requests the Implementation Committee to take these into account in its work;

5. *Urges* the former Yugoslav Republic of Macedonia to provide the overdue responses to the questionnaire for the period under review, and requests the secretariat to make them available on the Convention website;

6. *Decides* that the current questionnaire will also be used for the preparation of the review of the implementation of the Convention during the period 2016–2018, except for minor modifications that the Implementation Committee and the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment may decide, taking into account the suggestions provided by Parties for improving the report;

7. *Also decides* that Parties shall complete the questionnaire as a report on their implementation of the Convention during the period 2016–2018, noting the obligation to report arising from article 14 bis of the Convention, as adopted by its decision III/7, and that a failure to report on implementation might be a compliance matter to be considered by the Implementation Committee;

8. *Urges* Parties to report by the deadline to be agreed by the Working Group;

[1] Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context (ECE/MP.EIA/7), Guidance on the Practical Application of the Espoo Convention (ECE/MP.EIA/8) and Guidance on Subregional Cooperation (ECE/MP.EIA/6, annex V, appendix).

9. *Requests* the secretariat to post national reports on the Convention website in the languages in which they are available;

10. *Also requests* the secretariat to put the project lists included in the answers to the questionnaire on the Convention website, unless the countries object to this;

11. *Decides* that a draft sixth review of implementation of the Convention during the period 2016–2018 based on the reports by Parties will be presented at the eighth session of Meeting of the Parties to the Convention, and that the workplan shall reflect the elements required to prepare the draft review;

12. *Requests* the secretariat to foresee the subsequent publishing of the sixth review of implementation, once adopted, in an electronic format in all three official languages of ECE.

Decision VII/6

Application of the Convention to nuclear energy-related activities

The Meeting of the Parties to the Convention,

Recalling its decision VI/7 on the application of the Convention on Environmental Impact Assessment in a Transboundary Context to nuclear energy-related activities and its decision V/9–I/9 on the adoption of the workplan up to the fifth meeting of the Parties,

Also recalling part A of the Geneva Declaration (see ECE/MP.EIA/20/Add.3–ECE/MP.EIA/SEA/4/Add.3), adopted by the Meeting of the Parties to the Convention at its sixth session (Geneva, 2–5 June 2014),

Reiterating that nuclear energy-related activities by their nature can lead to significant transboundary and long-range adverse environmental impacts and imply special challenges owing, inter alia, to national interests and, in some countries, greater public concern,

Further reiterating that the Convention is a key instrument establishing rules for domestic action and international cooperation for preventing, reducing and controlling significant adverse transboundary environmental impact from proposed activities that include nuclear energy-related activities,

Recognizing that it is essential for Parties to meet fully their obligations deriving from the Convention, and therefore urging them all to do so,

Wishing to assist Parties in complying with their obligations under the Convention, and to promote its effective application,

1. *Welcomes* the development of draft good practice recommendations by consultants to the secretariat under the supervision of members of an editorial group representing Austria, Belarus, the European Commission, Finland, France, Germany, the Netherlands, Poland, Ukraine and the European ECO Forum, with support from the secretariat, in line with agreed terms of reference, and taking into account the information provided by a number of Parties and stakeholders through a questionnaire survey and also comments from the Bureau and the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment;

2. *Endorses* the good practice recommendations on the application of the Convention to nuclear energy-related activities (Good Practice Recommendations) set out in document ECE/MP.EIA/2017/10;

3. *Recognizes* that the Good Practice Recommendations do not seek to offer a legal interpretation of, or impose obligations under, the Convention;

4. *Recommends* that the Parties take into account the contents of the Good Practice Recommendations when implementing and applying the Convention;

5. *Calls on* the Parties to distribute the Good Practice Recommendations to authorities and relevant stakeholders;

6. *Invites* Parties to provide information to the Working Group on the usefulness of the Good Practice Recommendations;

7. *Welcomes* the other examples of existing practices provided by Parties on their application of the Convention to nuclear energy-related activities, as included in an informal document submitted to the Meeting of the Parties;[2]

8. *Proposes* that the Good Practice Recommendations could be used in the capacity-building activities included in the workplan.

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[2] Practical examples of the application of the Convention to nuclear energy-related activities (informal document ECE/MP.EIA/2017/INF.6) available from http://www.unece.org/env/eia/meetings/mop_7.html#/.

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GE.17-16509(E)

1716509

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Decision III/1

Reporting and review of implementation of the Protocol

The Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol,

Recalling decision I/7–V/7 of the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context and the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment (Meeting of the Parties to the Protocol) and decision II/1 of the Meeting of the Parties to the Protocol on reporting and the review of implementation,

Also recalling article 14, paragraph 4, of the Protocol, concerning the regular review of the implementation of the Protocol,

Further recalling article 14, paragraph 7, of the Protocol, on reporting by Parties on measures they have taken to implement the Protocol,

Additionally recalling article 13, paragraph 4, of the Protocol, concerning reporting by Parties on their application of article 13 on policies and legislation,

Recognizing that regular reporting by each Party provides important information that facilitates the review of compliance under the Protocol and thereby contributes to the work of the Implementation Committee,

Recognizing also that the report of each Party provides useful information to other countries within and beyond the United Nations Economic Commission for Europe (ECE) region that facilitates their efforts to implement and accede to the Protocol,

Having analysed the reports provided by Parties in response to the questionnaire on implementation of the Protocol during the period 2013–2015,

Expressing strong concern that the former Yugoslav Republic of Macedonia, which was a Party to the Protocol during the period under review, has not responded to the questionnaire,

Strongly emphasizing the importance of the timely submission of reports,

Expressing concern that Portugal reported on its implementation of the Protocol during the prior review period, 2010–2012, with a delay of three years,

Also expressing concern that Montenegro and Serbia, which were Parties to the Protocol during the period under review, responded to the questionnaire late (i.e., after the extended deadline of 30 April 2016),

Expressing appreciation that Italy and Malta, States not Parties to the Protocol during the period under review, and Belarus and Bosnia and Herzegovina, States not Parties to the Protocol, nevertheless responded to the questionnaire,

1. *Welcomes* the reports by Parties on their implementation of the Protocol during the period 2013–2015, which have been made available on the Convention website;

2. *Adopts* the second review of implementation of the Protocol as contained in document ECE/MP.EIA/SEA/2017/9, and requests the secretariat to arrange for its publication in an electronic form in all three official languages of ECE;

3. *Notes* the findings of the second review of implementation of the Protocol, including the following possible weaknesses or shortcomings and areas for further improvement in the implementation of the Protocol by Parties:

(a) A need to align practice on the obligations arising from article 5, paragraph 3, and article 6, paragraph 3, of the Protocol with respect to public participation in screening and scoping;

(b) A need to ensure that strategic environmental assessment documentation systematically contains information on health, including transboundary effects, following article 7, paragraph 2, and annex IV to the Protocol;

(c) Difficulties related to the translation of documentation during transboundary consultations and arising from differences in national practice as regards the strategic environmental assessment procedures, leading to Parties failing fully to understand the procedure for particular consultations;

(d) A lack of bilateral agreements or other arrangements to facilitate transboundary consultations between several Parties, in particular in order to improve effectiveness in relation to language-related issues, time frames, public participation, the interpretation of various terms, the organization of transboundary strategic environmental assessment procedures and the application of the Protocol;

(e) A need to improve the application of the Protocol, on the basis also of valuable experience gained so far, which should be further shared among Parties and other stakeholders;

(f) A lack of timely reporting by Parties, the majority of which submitted their reports following their obligation under article 14, paragraph 7, of the Protocol, so as to ensure the all-inclusive character of the review of implementation, which enables the Implementation Committee to highlight possible general and individual compliance issues and helps Parties to identify priorities for future work and disseminate good practice;

(g) A possible need to revise and update the *Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment*,[1] taking into account any available examples of good practice presented by Parties in their responses;

4. *Requests* the secretariat to bring to the attention of the Implementation Committee general and specific compliance issues identified in the second review of implementation, and requests the Implementation Committee to take these into account in its work;

5. *Urges* the former Yugoslav Republic of Macedonia to provide the overdue responses to the questionnaire, and requests the secretariat to make it available on the Convention website;

6. *Decides* that the current questionnaire will also be used for the preparation of the next review on the implementation of the Protocol during the period 2016–2018, except for minor modifications that the Implementation Committee and the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment may decide, taking into account the suggestions provided by Parties for improving the report;

7. *Also decides* that Parties to the Protocol shall complete the questionnaire as a report on their implementation of the Protocol during the period 2016–2018, taking note of

[1] ECE/MP.EIA/17.

the obligations to report arising from article 14, paragraph 7, and article 13, paragraph 4, of the Protocol;

8. *Urges* Parties to report by the deadline to be agreed by the Working Group;

9. *Requests* the secretariat to post the lists of domestic and transboundary strategic environmental assessment cases included in the answers to the questionnaire on the Convention website, unless the Parties object to this;

10. *Decides* that a draft third review of implementation of the Protocol during the period 2016–2018 based on the reports by Parties will be presented at the fourth session of the Meeting of the Parties to the Protocol, and that the workplan shall reflect the elements required to prepare the draft third review;

11. *Requests* the secretariat to post the draft third review of implementation of the Protocol and national reports on the Convention website in the languages in which they are available;

12. *Further requests* the secretariat to foresee the subsequent publishing of the third review of implementation, once adopted, in an electronic format in the three official languages of ECE.

Draft decision III/2

Review of compliance with the Protocol

The Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol,

Recalling article 14, paragraph 6, of the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, and decision V/6–I/6 of the of the Meeting of the Parties to the Convention and the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol concerning the application of the compliance procedure of the Convention to the Protocol,

Determined to promote and improve compliance with the Protocol,

Seeking to promote the identification, as early as possible, of difficulties encountered by Parties in complying with the Protocol and the adoption of the most appropriate and effective solutions for resolving those difficulties,

Having reviewed the structure and functions of the Implementation Committee under the two treaties, as adopted by the Meeting of the Parties to the Convention through its decisions III/2[2] and VI/2,[3] and considering that it is necessary to ensure continuity of the Committee's work during each intersessional period,

Also having reviewed the operating rules adopted by the Meeting of the Parties to the Convention in its decision IV/2,[4] as amended by its decisions V/4[5] and VI/2,[6] and

[2] See ECE/MP.EIA/6.
[3] See ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1.
[4] See ECE/MP.EIA/10.
[5] See ECE/MP.EIA/15.
[6] See ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1.

recognizing the importance of improving the effectiveness of the compliance mechanism under the Convention,

Recognizing the importance of rigorous reporting by Parties of their compliance with the Protocol,

Noting the second review of the implementation of the Protocol,[7] based on Parties' answers to the questionnaires on the implementation of the Convention and the Protocol, as adopted in its decision III/1,

Recalling that the compliance procedure is assistance-oriented and that Parties may make submissions to the Implementation Committee on issues regarding their compliance with the Protocol,

1. *Adopts* the Implementation Committee's report on its activities contained in document ECE/MP.EIA/2017/4–ECE/MP.EIA/SEA/2017/4;

2. *Welcomes* the reports of the Implementation Committee's meetings in the period following the second session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol;

3. *Requests* the Implementation Committee:

(a) To keep the implementation and application of the Protocol under review;

(b) To promote and support compliance with the Protocol, and to provide assistance in this respect, as necessary;

4. *Welcomes* the examination by the Committee of specific compliance issues identified in the first review of implementation of the Protocol[8] regarding Austria, Spain and the European Union, which in the case of Austria and Spain resulted in the Committee declaring its satisfaction with the clarifications provided by the Parties, and in the case of the European Union led to a proposal to assess the additional replies of the European Union at its next session;

5. *Also welcomes* the examination by the Committee of information received from other sources, including the public, regarding Armenia and Serbia, which resulted in the Committee declaring its satisfaction with the clarifications provided by Armenia. In the case of Serbia, the Committee will continue to gather information at its forthcoming sessions;

6. *Encourages* Parties to bring issues concerning their own compliance before the Committee;

7. *Requests* the Implementation Committee to provide assistance to Parties in need of such assistance, as appropriate and to the extent possible, and in this respect refers to its decision III/3 on the adoption of the workplan;

8. *Urges* Parties to take into account in their further work the recommendations for further improving the implementation of and compliance with the Protocol, including by strengthening national legislation, based on but not limited to the analyses on general compliance issues from the first and second reviews of implementation, adopted in its decisions II/1 and III/1, respectively, as well as the Good Practice Recommendations on

[7] ECE/MP.EIA/SEA/2017/9.

[8] ECE/MP.EIA/SEA/2014/3, adopted by the Meeting of the Parties to the Protocol through decision II/1.

Public Participation in Strategic Environmental Assessment,[9] endorsed by Parties in decision II/8;

9. *Invites* the Implementation Committee to review, and revise if necessary, its structure and functions and the amendments to its operating rules set out in annexes I and II to decision VII/2 of the Meeting of the Parties to the Convention so as to facilitate deliberations on compliance issues, for example, by deciding to hold at least one virtual meeting a month in the English language.

[9] ECE/MP.EIA/SEA/2014/2.